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**From:** Chin, Lucita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA404E3F56574242AEE0811A07E309FC-CHIN, LUCITA]  
**Sent:** 3/12/2015 2:32:09 PM  
**To:** Logan, Paul [Logan.Paul@epa.gov]  
**CC:** Ward, W. Robert [Ward.Robert@epa.gov]  
**Subject:** RE: Proposed In-Situ Uranium Mining Rule Is Legally Flawed, Industry Counsel Says

# Ex. 5 AC/DP

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**From:** Logan, Paul  
**Sent:** Thursday, March 12, 2015 8:09 AM  
**To:** Chin, Lucita  
**Cc:** Ward, W. Robert  
**Subject:** RE: Proposed In-Situ Uranium Mining Rule Is Legally Flawed, Industry Counsel Says

# Ex. 5 AC/DP

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**Paul Logan**  
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**From:** Chin, Lucita  
**Sent:** Thursday, March 12, 2015 6:35 AM  
**To:** Ward, W. Robert; Logan, Paul  
**Subject:** FW: Proposed In-Situ Uranium Mining Rule Is Legally Flawed, Industry Counsel Says

Article on our new proposed UMTRCA rule. Also, not sure if you heard, but the NRC's ASLB pushed out the date of their decision on Dewey Burdock. They said March 10<sup>th</sup> but came out that day and announced it would not be ready until April 30<sup>th</sup>. - Lucita

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**From:** Minter, Douglas  
**Sent:** Wednesday, March 11, 2015 2:27 PM  
**To:** Shea, Valois; Cheung, Wendy; Chin, Lucita  
**Subject:** FW: Proposed In-Situ Uranium Mining Rule Is Legally Flawed, Industry Counsel Says

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**From:** Graves, Brian  
**Sent:** Wednesday, March 11, 2015 8:21 AM  
**To:** Bates, William; Belaval, Marcel; Cheung, Wendy; Coffman, Joel; Cole, Larry; Cutler, Thor; Dermer, Michele; Elkins, Timothy; Ferreira, James; Frazier, Mike; Garrett, David; Graves, Brian; Hildebrandt, Kurt; Johnson, Ken-E; Jollie, Jeff; Kim, Lisa; Kobelski, Bruce; Micham, Ross; Platt, Steve; Rectenwald, David; Robin, George; Rodriguez, Luis; Rumrill, Nancy; Smith, Robert-Eu; Springborg, Denise; Tinsley, Chuck; R6 6WQ-SG; Lawrence, Rob; Gillespie, David; Minter, Douglas; Tiago, Joseph  
**Subject:** Proposed In-Situ Uranium Mining Rule Is Legally Flawed, Industry Counsel Says

## **Proposed In-Situ Uranium Mining Rule Is Legally Flawed, Industry Counsel Says**

*By Matthew Berger BNA*

March 10 — A proposed rule addressing possible groundwater contamination from in-situ uranium mining operations could face legal challenges, industry representatives said March 10.

The proposed rule was discussed at a public hearing at Environmental Protection Agency headquarters, where reactions were mixed (80 Fed. Reg. 4156).

The rule would amend regulations under the Uranium Mill Tailings Radiation Control Act to take into account groundwater contamination from in-situ uranium extraction, now the dominant mining method in the U.S.

“This rule is legally invalid on its face and could be subject to numerous legal challenges,” Christopher Pugsley of Thompson and Pugsley PLLC, who is serving as outside counsel to the National Mining Association, said.

Others saw no problem with the proposed rule and instead took issue only with the amount of time it has taken for the rule to be developed.

“We are truly pleased that this draft is finally a reality,” said the Natural Resources Defense Council's Geoffrey Fettus, adding that his organization first called for the rule more than a decade ago.

Since then, in-situ mining has become the main method of extraction at U.S. uranium mining operations. Unlike in the conventional mining method, in which the ore is removed so the uranium minerals can be extracted, in-situ mining leaves the ore in place and instead pumps in a solution that dissolves the minerals and brings them to the surface.

This results in little disturbance to the surface of the mine site but has the potential to contaminate groundwater aquifers that would otherwise be used for drinking water or other purposes. Limiting, remediating and monitoring that contamination is the aim of the EPA's proposed rule.

### **EPA Announced Plans for Rule in 2009**

The EPA first announced its intention to propose the rule in 2009 (79 DEN A-22, 4/24/14).

It was published Jan. 26, and the comment period ends April 27 (17 DEN A-11, 1/27/15).

Benjamin Klein, of the Uranium Producers of America, requested at the hearing that the comment period be extended, noting the significant length of the new rule and the fact that his organization hadn't yet completed its review.

“We are very concerned that through this rule-making we could see our industry shrinking considerably,” Klein said.

One way in which that could happen, Klein said, is through the proposed rule's provision applying retroactively to existing mining operations. He said existing operations didn't include the costs of compliance with this rule into their planning, and this added cost would render many of them uneconomical.

Fettus said he didn't see a need for any extensions of the comment period, noting the years of work and many comments that have already gone into the rule-making process. “This can be done with all dispatch,” he said. “We give our unequivocal support for EPA's well-rounded proposed law.”

### **Long-Term Monitoring**

Klein also criticized the proposed rule's requirement to monitor affected sites for 30 years, saying he didn't see any evidence that warranted such long-term monitoring.

But Neil Blandford, a hydrologist working with the Goliad County (Texas) Groundwater Conservation District, said long-term monitoring of mining sites is necessary because of how dependent his region is on groundwater supplies and the need to protect them from contamination.

Long-term monitoring, he said, is “really the last resort that the district has in terms of protecting these water resources.” Pugsley and the NMA's Katie Sweeney both contended at the hearing that the EPA was overstepping its regulatory authority with the new rule.

#### **Called ‘Overreach’ Into NRC's Territory**

“This is an overreach into the [the Nuclear Regulatory Commission's] territory,” Pugsley said, adding that it was “an attempt by the EPA to direct the NRC on how to comply with criterion 5B(5).”

That rule, in NRC regulation 10 CFR Part 40 Appendix A, says that the concentration of hazardous byproducts from uranium mining in the groundwater of those sites may not exceed levels set by the NRC—usually the baseline levels that were present in the groundwater before uranium extraction began.